

Message Text

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ACTION EUR-12

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TO SECSTATE WASHDC IMMEDIATE 6691
SECDEF WASHDC IMMEDIATE
INFO CNO WASHDC
AMEMBASSY LONDON

C O N F I D E N T I A L SECTION 01 OF 02 USNATO 10166

SECDEF FOR OASD/ISA AND MRA&L, ODDR&E; CNO FOR OP-098

E.O.11652: GDS
TAGS: NATO, OCON, MILI
SUBJECT: US/UK MOUS AND THE CASE ACT

REF: USNATO 10067 DTG 191411Z OCT 77 NOTAL
SUMMARY: ON TWO OCCASIONS THIS PAST WEEK WE HAVE BEEN CON-
FRONTED WITH THE CURRENT US/UK PROBLEM CONCERNING MOUS AND
THE CASE ACT. WE BELIEVE THAT THE PRESENT BI-LATERAL CON-
TEXT OF THE PROBLEM IS EXPANDING TO THE ALLIANCE AS A
WHOLE. WE SEE THE NEED FOR AN EARLY RESOLUTION BECAUSE OF
THE SIDE EFFECTS THIS PROBLEM CAN HAVE ON OUR PRESENT
NEGOTIATIONS WITH FRANCE AND GERMANY (AND OTHERS) ON MOUS
ON DEFENSE COOPERATION, AND THE WORK OF TF-8 ON RATIONALI-
ZATION. WE ARE NOT IN A POSITION TO SUGGEST THE FINAL
SOLUTION TO THIS HIGHLY COMPLEX ISSUE. HOWEVER, IN THE
INTERESTS OF PRESERVING OUR CURRENT COMMITMENT TO NATO
STANDARDIZATION, WE SUGGEST DRAWING A DISTINCTION BETWEEN
THE BROAD, PARTIALLY POLITICAL, UMBRELLA-TYPE MOUS AND THE
TECHNICAL AND/OR RESEARCH AND DEVELOPMENT TYPE. END
SUMMARY.
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1. TWO SEPARATE, BUT RELATED, EVENTS THIS PAST WEEK
SERVED TO RETURN THE PROBLEM OF THE US/UK MOUS AND THE
CASE ACT TO OUR IMMEDIATE ATTENTION. THE FIRST OCCURRED
AS A RESULT OF A UK STATEMENT MADE AT THE MEETING OF THE
NATO NAVAL ARMAMENTS PROJECT GROUP (PG/14) ON A NATO
EXPLOSION RESISTANT MULTI-INFLUENCE SWEEP SYSTEM (ERMISS),

REPORTED REFTEL. THE SECOND OCCURRED WHEN THE ASYG DEFENSE SUPPORT (WALSH) CALLED ON THE DCM OCTOBER 17 TO ELICIT HIS HELP IN ARRIVING AT AN EARLY SOLUTION TO THE US/UK MOU PROBLEM.

2. AS WE UNDERSTAND IT, THE ISSUE OF SENDING MEMORANDA OF UNDERSTANDING ON DEFENSE EQUIPMENT TRANSACTIONS TO CONGRESS UNDER THE CASE ACT HAS RAISED LEGAL, DISCLOSURE, AND PROCEDURAL PROBLEMS RESULTING IN HOLDING UP SIGNATURE OF SEVERAL IMPORTANT US/UK MOUS, INCLUDING TOW AND SUB HARPOON. WE ALSO UNDERSTAND THAT OASD/ISA (MR. KRAMER) CHAIRED AT LEAST TWO MEETINGS WITH UK OFFICIALS TO TRY TO RESOLVE THIS ISSUE.

3. AT THIS JUNCTURE, WE BELIEVE THAT, ALTHOUGH THE PROBLEM WAS RAISED IN A US/UK CONTEXT, OTHER ALLIES ARE STANDING ON THE SIDELINES WATCHING AND WAITING FOR A SATISFACTORY RESOLUTION. THE ERMIS MOU IS A MULTI-NATION MOU AND YET IT IS STALLED ON THE BASIS OF CURRENT US/UK NEGOTIATIONS.

4. WE HAVE SUGGESTED (REFTEL) THAT AT THE OCTOBER 25-26 CNAD, DR PERRY BE PREPARED TO RESPOND TO THE SPECIFIC ISSUE OF ERMIS, AND ALSO TO PROVIDE A US POSITION ON MOUS IN GENERAL. WE BELIEVE THAT, SINCE THE ERMIS TOPIC WILL COME UP IN THE RESTRICTED SESSION OF THE CNAD, THE DISCUSSION WILL TEND TO BROADEN. INDEED, FRANCE AND

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GERMANY, WITH BOTH OF WHOM WE ARE NEGOTIATING UMBRELLA MOUS ON DEFENSE COOPERATION, ARE ALSO INVOLVED IN THE ERMIS MOU.

5. WE ARE ALSO CONCERNED THAT THE PRESENT US/UK IMPASSE ON MOUS COULD HAVE AN ADVERSE EFFECT ON THE WORK OF THE TASK FORCE ON RATIONALIZATION (UNDER THE LONG-TERM DEFENSE PROGRAM). THE TASK FORCE EFFORT TO DEVELOP A PROGRAM FOR AN INTEGRATED NATO ARMAMENTS PLANNING SYSTEM WILL HAVE TO INCLUDE BASIC UNDERSTANDINGS AND AGREEMENTS ON RATIONALIZING AND HARMONIZING ARMAMENTS PROCUREMENT PROCESSES. AGREEMENT ON THE STATUS OF AN MOU VIS-A-VIS INTERNATIONAL LAW IS LIKELY TO BE SEEN AS ONE OF THOSE BASIC UNDERSTANDINGS.

6. WE ARE NOT IN A POSITION TO PASS JUDGEMENT ON THE LEGAL RAMIFICATIONS OF THE INTERPRETATION OF THE CASE ACT. HOWEVER, IF WE ARE NOT ABLE TO ACCEPT THE UK POSITION THAT NO MOU BETWEEN GOVERNMENT DEPARTMENTS IS LEGALLY BINDING, THEN WE WILL NEED TO FIND ANOTHER RESOLUTION. IT SEEMS TO US THAT ONE WAY WOULD BE TO DRAW A DISTINCTION BETWEEN THE MOUS IN QUESTION. THOSE SUCH AS THE UMBRELLA

PROCUREMENT MOUS WHICH HAVE BROAD AND PARTIALLY POLITICAL OBJECTIVES WOULD IN OUR VIEW FALL UNDER THE CASE ACT. THOSE SUCH AS ERMIS WHICH ARE TECHNICAL IN NATURE AND/OR INVOLVE RESEARCH AND DEVELOPMENT RATHER THAN PRODUCTION AND PROCUREMENT MIGHT FALL UNDER A DIFFERENT LEGAL REGIME. INDEED, A NAME OTHER THAN MOU MIGHT BE FOUND FOR THESE. THE ARMS TRANSFER POLICY EXEMPTION FOR NATO ALLIES SHOULD HELP AVOID ANY LEGAL OR POLICY PROBLEMS ON THE ARMS CONTROL FRONT.

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C O N F I D E N T I A L SECTION 02 OF 02 USNATO 10166

7. A DISTINCTION ALONG THE LINES SUGGESTED ABOVE MIGHT HELP STRENGTHEN OUR CASE WITH THE UK AND BREAK THE LOG JAM ON SEVERAL OF THE MOUS. IN ANY EVENT WE AGAIN URGE INTERESTED WASHINGTON AGENCIES TO FIND AN EARLY RESOLUTION TO THE PROBLEM. THE POTENTIAL FOR IMPACTING NEGATIVELY ON THE LONG-TERM INITIATIVES IS NOW CLEAR.
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